IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
FIRST APPEAL NO.31 OF 1993

The State of Maharashtra, )
(Through the Special Land )
Acquisition Officer No.14, )
903, Sadashiv Peth, )
Phadke Wada, Near Nagnath Par, )
Pune - 411 030. ).. Appellant

Vs.

Indian Law Society, )
I.L.S. Law College Buildings, )
Pune - 411 004. )
(Through its Honorary Secretary )
Shri Govind Sakharam Joshi. ).. Respondent

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Ms G.P.Mulekar, AGP for the appellant.

S/Shri S.M.Gorwadkar with Shri Rohit Pawaskar for the respondent.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 16th SEPTEMBER, 2005.

**ORAL JUDGMENT : ( PER V.M.KANADE, J )**

1. The appellant-State of Maharashtra being aggrieved by the judgment and order passed by the Extra Joint District Judge, Pune, in Land Reference No.88 of 1986 has preferred this First Appeal. By the

said judgment and order dated 17th January, 1992, the Land Reference Court was pleased to award compensation to the tune of Rs.38,54,541/- and directed that after deducting compensation to the tune of Rs.19,51,000/- which was already paid to the claimant, the balance amount of compensation to the tune of Rs.19,03,541/- be paid to the claimant with interest at the rate of 9 per cent per annum from the date of taking possession for the first year and at the rate of 15 per cent per annum from the next year till realisation with proportionate costs. After the appeal was admitted, cross objections were filed by the original claimant.

**Facts:**

2. Brief facts which are relevant for deciding the First Appeal are as under:-

. The Government of Maharashtra had acquired land for the benefit of the respondent-Indian Law Society, which is registered under the Societies Registration Act, in the year 1931. Out of this land, Government of Maharashtra decided to acquire 14 Hectares and 94 Ares of the land for the purpose of establishing the Film Institute of India. Accordingly, Notification under Section 4 of the Land

Acquisition Act, 1894, hereinafter called as "the said Act", was issued on 28th March, 1983. Thereafter, inquiry was held and notification under Section 9(3)(4) was issued by the Special Land Acquisition Officer and finally the award was passed on 29th July, 1985. Award was passed by the SLAO on 29th July, 1985 wherein he granted compensation at the rate of Rs.11/- per square meter. Notice was issued to the owners of the land under Section 12(2) of the said Act on 1st August, 1985. The claimant filed Reference within the period of limitation on 5th September, 1985 and demanded compensation at the rate of Rs.67.25 p.s.m. The total area under acquisition admittedly was 1,49,400 square meters. The land is situated on the slope of a hill. The Land Reference Court, after going through the evidence on record and after making necessary deductions, awarded compensation to the tune of Rs.38,54,541/-.

3. The learned AGP appearing on behalf of the State has vehemently urged that the compensation awarded by the Land Reference Court was on a higher side and it had not taken into consideration the various factors in respect to the situation and location of the land. She submitted the land in question was admittedly on a hill slope and was

accordingly shown in the development plan, which was published in 1966, and in the subsequent revised development plan, a restriction was imposed on the development of the said land as it was situated on hill slope. She submitted that no steps had been taken by the Respondents to remove the restriction on development of the said land. She submitted that this aspect had not been considered by the Reference Court. She further submitted that the land in question was situated on a steep slope and that the considerable expenditure was involved to convert the undeveloped land situated on the hill slope to a land which would be suitable for development. She submitted that all the sale instances on which reliance was placed by the claimant were not comparable with the land which was under acquisition, firstly because the sale instances pertain to developed plots whereas the said land was a undeveloped plot, and secondly the land under acquisition was put to certain restrictions regarding development of the said plot, and therefore, the sale instances on which reliance was placed by the claimant and which was accepted by the Land Reference Court were not comparable. Therefore, according to her, compensation awarded was excessive. She submitted that the SLAO had correctly assessed the market value of the land as Rs.11/- p.s.m. She invited our

attention to the evidence of the two expert valuers, who were examined as witnesses.

4. Learned counsel appearing on behalf of the respondent, on the other hand, submitted that the Land Reference Court had made excessive deductions and the cumulative effect of all deductions would be more than 60%. He submitted that subsequent sale instances indicated the rises in the price of the land which was not taken into consideration by the Reference court. He further submitted that another sale instance which was proximate in point of time and proximate in point of situation of the land under acquisition ought to have been considered that the sale consideration was merely for Rs.200/- p.s.m. in respect of the land acquired in the year 1983. He submitted that therefore the respondent was entitled to enhanced compensation at the rate of Rs.65/- p.s.m.

5. In the present case, we have heard the learned AGP for the appellant-State and learned counsel for the respondent. We have also gone through the judgment and order passed by the Land Reference Court as well as the oral evidence placed on record. It is an admitted position that the land which was acquired was situated on hill slope and was an undeveloped

land. It is further admitted position that the sale instances which were cited and relied upon by the claimant were in respect of the developed plots.

6. Therefore, the short question which falls for our consideration is whether the Land Reference Court has properly evaluated the evidence on record and has considered the relevant factors which were to be taken into consideration in respect of undeveloped plot of land which is situated in the hill slope. One Shri Gangadhar Dattatraya Karkare, Expert Valuer, has been examined by the claimant as witness. In his evidence, he has stated that the value of sale instances would be Rs.48/- p.s.m. He has adopted the belting method. On the contrary, the evidence of expert valuer Shri Prabhakar Vithal Shiralkar, who has been examined by the Government, stated that he valued the land at Rs.11.65 p.s.m. In our view, the Land Reference Court has correctly applied its mind on the sale instances which were proximate in point of time and proximate in point of situation from the land acquired. The Land Reference Court also at the same time has taken into consideration the various factors which had the effect of diminishing the value of the land and in paragraph 23 of the said judgment, it has noted the seven instances and the factors which had effect of

diminishing the value of the land. Further from the record, it can be seen that though the land was earlier earmarked as Hill Zone, the Government had, as a special case, considered the request of the acquiring body and had allotted the land under acquisition to be converted into residential user from the hill zone. The contention of the learned AGP that the said area was a hill zone and therefore there was a restriction on the development, cannot be accepted. Merely because the claimant did not apply for relaxation of the said condition and did not seek permission for development of the said land would not mean that there was permanent restriction on the development of the said area. Therefore, the said submission cannot be accepted and it will have to be held that the said restrictions on the development of the land in question was relaxable on application being made to the concerned authority. Once it is held that the land could be developed, then the other factors will have to be taken into consideration and deductions will have to be made to the extent which would make the undeveloped land into a developed land. The Land Reference Court, in our view, has considered in detail in paragraph 23 of its judgment the various deductions of area as well as costs which were likely to be incurred for the purpose of converting

undeveloped plot into a developed plot. The Land Reference Court has also considered the costs which would be incurred for giving a road access to the said plot in question, for construction of water line and drainage line. We therefore do not see any reason to interfere in the findings recorded by the Land Reference Court.

7. As regards the submission made by learned counsel appearing on behalf of the respondent-claimant regarding consideration of sale instances immediately after the Notification under Section 4 of the said Act is concerned, we are unable to accept the said submission as it is settled position in law that the market value of the land as on the date on which the notification under Section 4 of the said Act came to be issued has to be taken into consideration, and the market value of land after the said date has to be ignored for the simple reason that, on account of acquisition of the land in question, there is every possibility that the market value of the adjoining land would consequently shoot up and would not reflect the correct market value. Similarly, the reliance is placed on the sale instance dated 14th February, 1983 which was agreed to be sold at rate of Rs.229.15 ps. p.s.m. So far as this plot is concerned, the expert

valuer, who was examined by the claimant himself, after taking into consideration the said sale instance and deductions which were to be made, has observed that the value of the acquired land would be Rs.48/- p.s.m. In view of the testimony of the claimant's own valuer, the reliance cannot be placed on the said sale instance in favour of the claimant. However, objection raised by the learned AGP for State regarding non-calculation of the amount already paid by the SLAO will have to be accepted. In the appeal memo, at Ground No.23, a specific ground is taken that the SLAO had fixed the total compensation at Rs.24,14,378/-. Since the amount of Rs.19,51,000/- was already paid, the balance amount of Rs.4,63,378/- was paid by the Government to the claimant after the award was declared on 29th July, 1985. If this amount has already been paid, the Reference Court ought to have deducted the said amount from the total amount which was payable to the claimant.

8. In the result, the appeal is partly allowed. If the amount of Rs.4,63,378/- has already been paid to the claimant/respondent herein by the Government, then the same amount may be deducted from the compensation payable to the claimant. Rest of the findings of the Land Reference Court are confirmed.

Appeal is allowed in the above terms. The cross objections filed by the respondent-claimant stand dismissed.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)